

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MICHAEL SKIDMORE, as Trustee for the
Randy Craig Wolfe Trust,

Plaintiff-Appellant,

v.

Nos. 16-56057, 16-56287

LED ZEPPELIN, et al.,

Defendants-Appellees.

**UNITED STATES' UNOPPOSED MOTION FOR LEAVE TO
PARTICIPATE AT ORAL ARGUMENT**

The United States hereby moves for leave to participate in oral argument in this case, scheduled for September 23, 2019. Counsel for defendants-appellees consent to this motion, and agree to cede 10 minutes of argument time to the United States. Counsel for plaintiff-appellant consents to this motion, provided that it does not expand the total time available for argument in support of defendants-appellees' position.

1. This is a copyright infringement action based on a musical composition. After a jury trial, the district court granted judgment for the defendants. A panel of this Court vacated the judgment in part and

remanded the matter for a new trial. This Court then granted rehearing en banc.

The United States filed an amicus brief in support of its interest in the proper interpretation of the copyright laws, and in particular in support of the Copyright Office's interest in the legal issues presented. The government's amicus brief addressed two issues: (1) whether the scope of the copyright for unpublished musical works registered before 1978 is defined by the complete copy of the work deposited with the Copyright Office; and (2) whether basic musical elements, such as a chord or chromatic scale, may ever be copyrightable, and whether the selection and arrangement of a small number of such elements can be entitled to only "thin" copyright protection, meaning that the copyright is infringed only by virtually identical copying. The government agreed with the panel, and with the defendants, on the first issue, but on the second issue concluded that the district court's judgment in favor of defendants should be affirmed because the relevant portion of the work at issue is entitled, at most, to a thin copyright, and the allegedly infringing work is not virtually identical.

2. The United States respectfully requests leave to participate at oral argument in support of the government's position in this case. The

government has a strong interest in the two issues that the government addressed in its amicus brief, and also has relevant expertise that could be of assistance to the Court. The first issue concerns the legal effect of depositing a complete copy of a work with the Copyright Office, an agency of the federal government, and the second issue involves the standard for originality applied by the Copyright Office in examining and registering copyrighted works.

The Court has allocated 30 minutes for each side to present oral argument. The government respectfully requests leave to present oral argument for 10 minutes. Counsel for defendants-appellees, whose position the United States supports, has agreed to cede 10 minutes of argument time to the United States. Counsel for plaintiff-appellant does not oppose this motion, provided that the government's argument time is taken from the time that would otherwise be allocated to defendants-appellees.

Respectfully submitted,

SCOTT R. McINTOSH

s/Daniel Tenny

DANIEL TENNY

(202) 514-1838

Attorneys, Appellate Staff

Civil Division

U.S. Department of Justice

950 Pennsylvania Ave., N.W.

Room 7215

Washington, DC 20530

AUGUST 2019

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion satisfies the type-volume limitation in Rule 27(d)(2)(A) because it contains 473 words. This motion was prepared using Microsoft Word 2016 in Book Antiqua, 14-point font, a proportionally-spaced typeface.

s/ Daniel Tenny

Daniel Tenny

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2019, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

s/ Daniel Tenny

Daniel Tenny